



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Betsy Shotwell

SUBJECT: SEE BELOW

DATE: May 18, 2005

Approved /s/

Date 05/18/05

**SUBJECT: WORKERS' COMPENSATION AND LEGISLATION TO ADDRESS
WORKERS' COMPENSATION ISSUES**

RECOMMENDATION

Accept staff report on status of workers' compensation reforms of 2004 in Sacramento and legislation to address workers' compensation issues, including cost reduction and benefit improvements.

BACKGROUND

The Mayor's 2005-2006 March Budget Message included the following:

"Workers' Compensation: Direct the City Manager to work with our state and federal lobbyists to recommend changes in state and federal legislation to address workers' compensation issues, including cost reduction and benefit improvements."

ANALYSIS

Last year the State Legislature passed, and the Governor signed into law, SB 899 (Poochigian) Chapter 34, which was the key workers' compensation reform measure enacted to establish uniform guidelines for evaluating injuries, determine personal disability benefits and set limits on medical costs. The State Labor and Workforce Development Agency has just released information that demonstrates workers' compensation savings in the private sector. The League of California Cities reported the following data demonstrating changes in workers' compensation rates and claims since the passage of SB 899:

- The Workers' Compensation Insurance Rating Bureau of California (WCIRB) reported a peak level of \$6.35 per \$100 of payroll as the actual average rates for insured employers in the last quarter of 2003. In the third quarter of 2004, after passage of SB 899 the rate dropped to \$5.34 per \$100 of payroll. If insurers pass through the projected savings from

the permanent disability schedule changes, it is expected that the rates per \$100 of payroll will drop to \$5.22 for early 2005 and \$4.68 by late 2005.

- In April of 2003, a total of 17,104 new disputed workers' compensation claims were recorded. In January 2005, the number of new disputed claims was down to 10,878.

The permanent disability rating schedule was a major issue central to the reforms in SB 899. According to the League of California Cities (LOCC), California has the highest amount of disputed permanent disability claims in a five-state median. California's rate of disputed claims is 30 percent, compared to 9 percent in New Mexico, 11 percent in Washington, 7 percent in Wisconsin and 15 percent in Oregon. The final regulations for this change in the law have yet to be finalized, but are near completion.

NEXT STEPS:

The LOCC has just announced that it will be contacting cities across the State to seek what the public sector experience has been with regards to these changes with the workers' compensation system as established by SB 899 in 2004. The LOCC will be establishing a data bank on the issue as some Legislators are proposing to revisit the reforms made in SB 899.

For San Jose, under the recent legislative changes to workers' compensation, the City estimates the following impacts:

- ◆ **Managing Medical Utilization Review:** According to state guidelines, failure to provide a timely response to a request for treatment can result in automatic authorization of the treatment, even if it is medically inappropriate or unnecessary. The City Medical Director in concert with the claims staff must ensure that the City of San Jose utilization review program promptly manages treatment for injured employees so that a quick recovery for the injured worker is realized while ensuring that treatment is provided in an appropriate and cost-effective manner.
- ◆ **Application of the New Permanent Disability Guidelines:** Claims adjusters must transition to a new methodology of calculating permanent disability for injured employees. The new system for disability rating requires the Adjuster to review the American Medical Association guidelines and ensure that the treating physician's evaluation is consistent with the guidelines in order to ensure that an appropriate rating is determined.
- ◆ **Monitoring the Limit of Temporary Disability:** Temporary and total disability has been limited to two years for most injuries. Formerly, temporary and total disability could extend indefinitely. Adjusters need to monitor the duration of total disability to ensure that it does not exceed the two-year limit.

- ◆ **Monitoring Chiropractic and Physical Therapy:** Chiropractic and physical therapy has been limited to 24 visits, instead of unlimited visits under the old law. Adjusters need to monitor this benefit closely to ensure that it does not exceed the 24 visit limit.
- ◆ **Managing Medical and Disability Proactively:** The passage of the new law, SB 899, allows the City Medical Director and Adjusters to actively work with treating physicians to ensure appropriate treatment for injured employees. Since the treating physician's presumption of correctness has been removed, WC can help facilitate appropriate treatment for injured employees who have plateaued in their recovery.
- ◆ **Establishing a Medical Provider Network:** The new laws allow the City to establish a medical provider network to treat injured employees. Employees, who have not designated a treating physician by the injury date, must participate in the medical network for the life of the claim. Establishing a medical network would allow the City to ensure prompt and appropriate medical treatment for its injured employees. Prompt and appropriate medical treatment should result in a faster recovery. A team consisted of employees and members from the City Labor Alliance, City Attorney's Office, and Employee Services is conducting research on this network to determine its feasibility and effectiveness for the City.
- ◆ **Return to Work:** The new laws require the employers to provide modified work for injured employees after their condition is determined to be permanent and stationary. Permanent and stationary status infers that the injured employee has improved as much as he or she can and that no additional medical treatment will allow the employee to improve. If the injured employee is not physically or mentally able to return to his/her usual and customary job, the City will attempt to find an alternate job that the employee can do. If modified work is not provided, the employer must pay the injured employee a 15% surcharge in addition to pre-determined disability payment. If such work is provided, disability payment is reduced by 15%. To adhere to the new laws, Adjusters will need to work closely with departments and the Return to Work Coordinator to determine how best to meet the needs of the Department while attempting to accommodate the injured employee.

The new Workers' Compensation reforms have increased the workload of the staff substantially. It also has brought some relief to escalating cost in recent years. For FY 03-04, the total workers' compensation costs to the City were \$19.8 million. Our preliminary analysis shows that the savings in FY 04-05 as a result of SB 899 are estimated to be \$1.5 million. We are continuing to monitor the refinements in the law and their impact on cost and operations.

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CONCLUSION

The passage of SB 899 in the 2004 Legislative Session has resulted in workers' compensation reform and cost savings to public and private sector employers. City staff will continue to monitor and evaluate the policy and fiscal impacts to the City of San Jose. Staff will also participate with the LOCC in the development of the LOCC's summary of SB 899 impacts on the public sector. The summary of SB 899 impacts will be provided to the Council when the LOCC report is completed and information concerning legislative proposals introduced during the 2005-2006 Legislative Session.

COORDINATION

This MBA was coordinated with Employee Services, our City's Sacramento Legislative Representative, and the City Attorney's Office.

/s/

BETSY SHOTWELL

Director, Intergovernmental Relations

